IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2382 OF 2005

Shri.Nimesh Mehta ..Applicant

Vs.

State of Maharashtra & Anr. ..Respondents

Mr.Manoj J.Bhatt Advocate for Applicant
Smt.N.H.Mhatre, A.P.P. for the State
None appears for respondent no.2 though served.

CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : OCTOBER 20, 2006
AT CHAMBER 2.35 P.M. IN CHAMBER

P.C.

1. Heard the learned advocate for the applicant and the learned A.P.P. for the State. None appears for the respondent no.2-orignial complainant though served.

2. The applicant is facing prosecution in C.C.No.1044/S/2003 which is pending before the learned Metropolitan Magistrate, 16th Court at Ballard Pier, Mumbai. In the said case, process has been issued against the applicant under Section

138 of the Negotiable Instruments Act. The applicant is seeking quashing of the said process.

3. Being aggrieved by the order of the learned Magistrate issuing process, the applicant had preferred revision before the Sessions Court being Criminal Revision Application No.484 of 2004. However, the said Criminal Revision Application came to be dismissed for default by the learned Sessions Judge by order dated 25th November, 2004.

4. In the meantime, in view of the decision of the Apex Court in the case of **Adalat Prasad Vs. Rooplal Jindal; 2004(4) Mh.L.J.274 and Subramaniam Sethuraman Vs. State of Maharashtra; 2005(1) Mh.L.J.626,** the applicant instead of seeking restoration of the said revision application, approached this Court praying for recalling of process issued against him.

5. In view of the decision of this Court in the case of **V.K.Jain and others Vs. Pratap P.Padode reported in 2005(3) Mh.L.J.778,** it is clear that a revision against the order of Magistrate issuing

process can be entertained by the Sessions Court. In this view of the matter and in the interest of justice, it would be proper that Criminal Revision Application No.484 of 2004 preferred by the applicant is restored to file and it is heard on merits. Criminal Revision Application No.484 of 2004 is restored to file. The applicant in person or through his counsel, shall appear before the Sessions Court on or before 30th November, 2006. The applicant shall give advance notice to the respondent-complainant regarding the date on which he will appear before the Sessions Court. On the applicant or his counsel appearing before the Sessions Court, the Sessions Court shall hear the said revision and dispose of the same on merits after hearing necessary parties. Stay granted by this Court on 21st June, 2005 will stand extended till the disposal of the revision application.

6. Criminal application is disposed of.

[SMT.V.K.TAHILRAMANI,J.]